

ENROLLED HOUSE
BILL NO. 1388

By: Roan and Russ of the House

and

Ivester of the Senate

An Act relating to corrections; amending 57 O.S. 2001, Section 549.1, as last amended by Section 39, Chapter 1, O.S.L. 2007 (57 O.S. Supp. 2010, Section 549.1), which relates to the Oklahoma Corrections Act of 1967; clarifying purchasing and bid requirements for products and services provided by the Prison Industries Program; authorizing entities to post solicitations for products or services on the website of the entity; amending 74 O.S. 2001, Section 85.12, as last amended by Section 2, Chapter 370, O.S.L. 2010 (74 O.S. Supp. 2010, Section 85.12), which relates to The Oklahoma Central Purchasing Act; clarifying description of acquisitions of the Department of Corrections; and providing an effective date.

SUBJECT: Corrections

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 3. AMENDATORY 57 O.S. 2001, Section 549.1, as last amended by Section 39, Chapter 1, O.S.L. 2007 (57 O.S. Supp. 2010, Section 549.1), is amended to read as follows:

Section 549.1 A. The Department of Corrections is authorized to purchase in the manner prescribed by law, facilities, equipment, raw materials and supplies, and to engage the supervisory personnel necessary to establish and maintain for this state at the penal institutions, now or hereafter under the control of the State Board of Corrections, industries and agricultural programs for the utilization of services of prisoners in the manufacture or

production of ~~the articles or~~ products and services as may be needed for the construction, operation, maintenance or use of any office, department, institution or agency supported in whole or in part by this state and the political subdivisions thereof. Upon the request of the Oklahoma Historical Society or the Oklahoma Tourism and Recreation Department, the Department of Corrections shall provide labor for and shall produce or manufacture ~~articles,~~ products or materials needed for the repair, construction and maintenance of historical sites and state parks including, but not limited to, the production of materials and products needed for the reconstruction of historic forts in the state.

B. ~~All articles~~ products and services provided by the Prison Industries Program of the Department of Corrections ~~in the state correctional institutions,~~ and not required for use therein, ~~shall~~ may be purchased as required by all by any office, department, institution, agency, county, city, district or political subdivision, school, college or university, or any agency thereof, or any agency of the state, which is supported in whole or in part by the state, directly without issuance of a solicitation or competitive bid.

C. All offices, departments, institutions, agencies, counties, schools, colleges, universities, or political subdivisions or any agency thereof of this state which are supported in whole or in part by this state, ~~if such article or service is the lowest and best bid, and no such article or product may be purchased by any such office, department, institution, agency, county, school, college, university, or political subdivisions or agency thereof from any other source unless excepted from the provisions as hereinafter provided. Purchases made by the above described state agencies may be made by submitting the proper requisition through the Department of Central Services or by direct order to the prison industries program of~~ shall include the Prison Industries Program of the Department of Corrections as a vendor in all solicitations for the purchase of products and services that are provided by the Prison Industries Program, and if such product or service is the lowest and best bid, the agency shall purchase the product or service from the Prison Industries Program of the Department of Corrections. The online posting of solicitations for the purchase of products or services on the website of the entity shall satisfy the solicitation requirements provided for in this subsection.

~~C. D. If a requisition is received by the Department of Central Services or a direct order is received by the Prison Industries~~

~~Program of the Department of Corrections from a state agency for any product or service is provided by the Prison Industries Program of the Department of Corrections and such product or service is also available from a severely handicapped person or a qualified nonprofit agency for the severely handicapped as provided in Section 3001 et seq. of Title 74 of the Oklahoma Statutes at a comparable price, then the product or service shall be purchased from such severely handicapped person or qualified nonprofit agency for the severely handicapped. If the product or service is not available within the time period required by the purchasing state agency, delivery dates do not meet the requirements of the agency and a waiver is obtained through the Department of Central Services, then such product or service may be purchased under the provisions of subsection B of this section or, if competitively bid, shall be purchased from the Department of Corrections under the provisions of subsection C of this section.~~

~~D. All offices, departments, institutions, agencies, counties, cities, districts or political subdivisions, schools, colleges, or universities, or any agency thereof, or any agencies of the state, which are supported in whole or in part by this state, may purchase the goods or services produced by the prison industries of the Department of Corrections through their properly authorized purchasing authority, or they may place a direct order without competitive bid, with the prison industries of the Department of Corrections.~~

E. Not-for-profit corporations or charitable agencies chartered in Oklahoma or other states may purchase such goods products and services provided by the Prison Industries Program and agriculture programs of the Department of Corrections. Units of the federal government and units of government in other states may also purchase such goods products and services. All entities which contract with the state, its political units, its agencies, its public institutions, not-for-profit corporations or charitable agencies chartered in Oklahoma may purchase goods products or services from the Department of Corrections which are used in the performance of such contracts. Any church located in the State of Oklahoma may also purchase goods products and services produced by the ~~prison industries~~ Prison Industries Program of the Department of Corrections. Any community action agency or council of governments within this state may purchase housing components produced by the ~~prison industries~~ Prison Industries Program of the Department of Corrections. Nothing shall prohibit the Department from bidding on portions of a state contract which are subcontracted by the primary

contractor.

F. Others are prohibited from purchasing such ~~goods~~ products and services, with the exception that all surplus agricultural products may be sold on the open market or bartered and exchanged for other food, feed or seed products of comparable value. The Department of Corrections shall keep complete and accurate records of any such barters or exchanges in such form and manner as the Department of Central Services may prescribe. A copy of such records shall be filed with the Department of Central Services no later than March 1 of each year for all barters or exchanges occurring in the previous calendar year.

G. Products provided, produced or manufactured by the Department of Corrections shall be of styles, patterns, designs and quantities specified by the Department of Corrections except where the same have been or may be specified by the Department of Central Services. Products shall be provided at a fair market price for comparable quality.

H. State agencies shall make maximum utilization of such products and services and no similar products or services shall be purchased by state agencies from any other source than the Department of Corrections ~~except as provided~~ without compliance with the provisions in subsections B, C and D of this section, unless the Department of Corrections certifies to the State Purchasing Director that it is not able to provide products and services, and no claim therefor shall be paid without such certification.

I. Exceptions from the mandatory provisions hereof may be made in any case where, in the opinion of the Department of Central Services, the ~~article or product does~~ products or services do not meet the reasonable requirements of or for such offices, departments, institutions or agencies, or in any case where the requisitions made cannot be reasonably complied with. No such offices, departments, institutions or agencies, shall be allowed to evade the intent and meaning of this section by slight variations from standards adopted by the Department of Central Services, when the ~~articles,~~ services provided or products produced or manufactured by the Department of Corrections, in accordance with established standards, are reasonably adapted to the actual needs of such offices, departments, institutions or agencies.

J. In the event of disagreement between the Department of

Corrections and the State Purchasing Director on fairness of price, ability to comply to specifications, reasonableness of specifications and timeliness of delivery of products or services the matter will be resolved by the Central Purchasing Director.

K. The Department of Central Services shall cooperate with the Department of Corrections in seeking to promote for use in state agencies and by all other eligible customers, the products provided, produced and manufactured and services provided by the ~~prison-~~industries Prison Industries Program of the Department of Corrections.

L. The Department of Corrections shall prepare catalogs containing the description of all ~~goods~~ products and services provided, with the pricing of each item. Copies of such catalog shall be sent by the Department of Corrections to all offices, departments, institutions and agencies of this state, and shall be available for distribution to all other eligible customers.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.12, as last amended by Section 2, Chapter 370, O.S.L. 2010 (74 O.S. Supp. 2010, Section 85.12), is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except as they may be directly in conflict herewith; and all claims, warrants, and bonds shall be examined, inspected, and approved as now provided by law.

B. Except as otherwise provided by this section, the acquisitions specified in this subsection shall be made in compliance with Section 85.39 of this title but are not subject to other provisions of The Oklahoma Central Purchasing Act:

1. Food and other products produced by state institutions and agencies;

2. The printing or duplication of publications or forms of whatsoever kind or character by state agencies if the work is performed upon their own equipment by their own employees. Pursuant to this paragraph, the state agency may only use equipment owned or leased by the agency and may only utilize that equipment for printing services required by the agency in performing duties imposed upon the agency or functions authorized to be performed by the agency. Any use of the equipment by the agency pursuant to an

agreement or contract with any other entity resulting in delivery of intermediate or finished products to the entity purchasing or using the products shall be subject to the provisions of The Oklahoma Central Purchasing Act;

3. Department of Transportation and Transportation Commission contractual services or right-of-way purchases; contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts; and contracts for public service type announcements initiated by the Department of Transportation; but not contractual services for advertising or public relations or employment services;

4. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by municipal ordinance, or by an Indian Tribal Council for use by the Department of Corrections only;

5. Acquisitions by the University Hospitals Authority. The Authority shall develop standards for the acquisition of products and services and may elect to utilize the Purchasing Division. The standards shall foster economy and short response time and shall include appropriate safeguards and record-keeping requirements to ensure appropriate competition and economical and efficient purchasing;

6. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

7. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

8. Acquisitions by the Oklahoma Municipal Power Authority;

9. Acquisitions by the Grand River Dam Authority;

10. Acquisitions by rural water, sewer, gas, or solid waste management districts created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act;

11. Acquisitions by the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, or the Midwestern Oklahoma Development Authority;

12. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when the Authority's Board of Directors determines that an emergency exists, and contracts for the services of legal counsel when approved by the Attorney General;

13. Expenditure of monies appropriated to the State Board of Education for Local and State Supported Financial Support of Public Schools, except monies allocated therefrom for the Administrative and Support Functions of the State Department of Education;

14. Expenditure of monies appropriated to the State Department of Rehabilitation Services for educational programs or educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf;

15. Contracts entered into by the Oklahoma Department of Career and Technology Education for the development, revision, or updating of vocational curriculum materials, and contracts entered into by the Oklahoma Department of Career and Technology Education for training and supportive services that address the needs of new or expanding industries;

16. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

17. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of this title;

18. Acquisitions made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

19. Acquisitions available to an agency through a General Services Administration (GSA) contract or other federal contract if the acquisition is on current statewide contract and the terms of the GSA or other federal contract, as determined by the State Purchasing Director, are more favorable to the agency than the terms of a statewide contract for the same products;

20. Purchases of pharmaceuticals available through a multistate or multigovernmental contract if such pharmaceuticals are or have

been on state contract within the last fiscal year, and the terms of such contract are more favorable to the state or agency than the terms of a state contract for the same products, as determined by the State Purchasing Director. The state entity designated by law, as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes, shall participate in the purchase of pharmaceuticals available through such contracts;

21. Contracts for managed health care services entered into by the state entity designated by law or the Department of Human Services, as specified in paragraph 1 of subsection A of Section 1010.3 of Title 56 of the Oklahoma Statutes;

22. Acquisitions by the Forestry Service of the Oklahoma Department of Agriculture, Food, and Forestry as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the acquisitions are not on current statewide contract or the terms of the federal contract are more favorable to the agency than the terms of a statewide contract for the same products;

23. Acquisitions of clothing for clients of the Department of Human Services and acquisitions of food for group homes operated by the Department of Human Services;

24. Acquisitions by the Oklahoma Energy Resources Board;

25. Acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs and acquisitions of food for group homes operated by the Office of Juvenile Affairs;

26. State contracts for flexible benefits plans pursuant to the Oklahoma State Employees Benefits Act, Section 1361 et seq. of this title;

27. Acquisitions by the Department of Securities to investigate, initiate, or pursue administrative, civil, or criminal proceedings involving potential violations of the acts under the Department's jurisdiction;

28. Acquisitions by the Native America Cultural and Educational Authority and acquisitions by the Oklahoma Department of Commerce to assist the Native American Cultural and Educational Authority pursuant to Section 5017 of this title;

29. Acquisitions for resale in and through canteens operated pursuant to Section 537 of Title 57 of the Oklahoma Statutes;

30. Acquisitions by the Oklahoma Boll Weevil Eradication Organization for employment and personnel services, and for acquiring sprayers, blowers, traps, and attractants related to the eradication of boll weevils in this state or as part of a national or regional boll weevil eradication program;

31. Contracts entered into by the Oklahoma Indigent Defense System for expert services pursuant to the provisions of subsection D of Section 1355.4 of Title 22 of the Oklahoma Statutes;

32. Acquisitions by the Oklahoma Correctional Industries and the Agri-Services programs of the Department of Corrections of raw materials, component parts, trailers, and other products, any equipment excluding vehicles below a gross vehicle weight of fourteen thousand (14,000) pounds, and any services excluding computer consultant services used to ~~produce goods~~ provide products or services for resale and for the ~~production~~ provision of agricultural products;

33. Contracts entered into by the Department of Human Services for provision of supported living services to members of the plaintiff class in Homeward Bound, Inc., et. al., v. The Hisson Memorial Center, et. al., Case Number 85-C-437-E, United States District Court for the Northern District of Oklahoma;

34. Contracts negotiated by the Office of Juvenile Affairs with designated Youth Services Agencies and the Oklahoma Association of Youth Services, or another Oklahoma nonprofit corporation whose membership consists solely of Youth Services Agencies and of whom at least a majority of Youth Services Agencies are members, pursuant to the provisions of Section 2-7-306 of Title 10A of the Oklahoma Statutes;

35. Contracts not to exceed One Hundred Thousand Dollars (\$100,000.00) entered into by the Department of Environmental Quality for engineering services to assist qualifying small municipalities or rural water or sewer districts with engineering reports or plans and specifications needed for construction or repairs to achieve compliance with federal and state public water supply or wastewater laws and regulations; and

36. Contracts for annuities for structured settlements provided

for in Section 158 of Title 51 of the Oklahoma Statutes.

C. Pursuant to the terms of a contract the State Purchasing Director enters into or awards, a state agency, common school, municipality, rural fire protection district, county officer, or any program contract, purchase, acquisition or expenditure that is not subject to the provisions of The Oklahoma Central Purchasing Act, may, unless acting pursuant to a contract with the state that specifies otherwise, make use of statewide contracts and the services of the Purchasing Division and the State Purchasing Director. Any political subdivision or rural fire protection district may designate the State Purchasing Director as its agent for any acquisition from a statewide contract or otherwise available to the state.

D. The State Purchasing Director shall make periodic audits of the purchasing procedures of the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority to ensure that the procedures are being followed.

SECTION 3. This act shall become effective November 1, 2011.

Passed the House of Representatives the 17th day of May, 2011.

Presiding Officer of the House of
Representatives

Passed the Senate the 19th day of May, 2011.

Presiding Officer of the Senate